



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095

(603) 271-3503 FAX (603) 271-2982



Anthony Barrile,
Chief Operating Officer
Roads Construction, Inc.
241 Treble Cove Road
North Billerica, MA 01862

ADMINISTRATIVE ORDER

No. WD 01- 17

April 18, 2001

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division to Roads Construction, Inc., pursuant to RSA 485-A:22.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal offices at 6 Hazen Drive, Concord, NH.
2. Roads Construction, Inc. (Roads) is a Massachusetts corporation having a mailing address of 241 Treble Cove Road, North Billerica, MA 01862.

C. STATEMENT OF FACTS AND LAW

1. Pursuant to RSA 485-A:17, DES regulates significant alteration of terrain and erosion control through a permit program. Pursuant to RSA 485-A:6, VIII, the Commissioner of DES has adopted Env-Ws 415 to implement this program.
2. Env-Ws 415.02(y) defines significantly altering terrain to include disturbing more than 100,000 sq.ft. of contiguous area.
3. RSA 485-A:17 requires any person who proposes to significantly alter the terrain to obtain a permit from DES prior to initiating the work.
4. Env-Ws 415.09(i) and (k) require that temporary and permanent methods for preventing soil erosion and controlling runoff be employed during earth moving activities on the Property.
5. Env-Ws 415.09(j) requires construction phasing and sequencing, including methods for limiting the length of time of exposure of unstabilized soils.
6. Steven E. Holdner and Julia M. Wayland are the owners of property located at 37 Moore Road, Hillsborough, NH identified as Lot 53, Map/Block 11J of the Hillsborough Tax records ("the Property").

7. On September 22, 2000, Mr. Holdner and Roads signed a DOT "Disposal Agreement" allowing for use of the Property as a disposal area for construction spoils from the Hillsborough By-Pass project. One of the stipulations of the agreement was that Roads would be responsible for obtaining a Site Specific permit.
8. On December 1, 2000, DES issued a Notice of Past Violations ("NPV") to Roads. The NPV noted two separate instances of water quality violations in Beard's Brook caused by the lack of sufficient erosion and sediment control measures by Roads at the construction site adjacent to the Brook. Although this site is unrelated to the Property, the underlying requirements are the same.
9. On April 10, 2001, DES received a complaint from the Town of Hillsborough stating that Roads had deposited material from the Hillsborough By-Pass project onto a steep slope of the Property, and no erosion control measures were in place.
10. A review of DES records showed that no permit had been applied for or issued to Roads for the terrain alteration activities on the Property.
11. On April 10, 2001, DES personnel noted turbidity in Beard's Brook caused by runoff coming from the Property. Water samples were taken and analyzed for turbidity. Turbidity results were 125 Nephelometric Turbidity Units (NTUs) for a sample collected at a point where runoff from the Property entered Beard's Brook. The background turbidity level in Beard's Brook was 6.9 NTUs.
12. On April 11, 2001, DES personnel spoke with Mr. Todd Clark of Roads via telephone. Mr. Clark claimed that he was unaware of the need for a permit for the Property.
13. On April 12, 2001, DES personnel met with Mr. Clark and inspected the Property and observed the following:
 - a. Site disturbance had occurred in excess of 100,000 square feet.
 - b. The disturbed area was not stabilized
 - c. Erosion control measures were not installed on the Property
 - d. There was snow cover on most of the site.
14. On April 13, 2001, DES personnel spoke via telephone to May Egner, a down-slope abutter to the Property. Mrs. Egner stated that there was mud coming down the unstabilized slope behind her home on Beard Road.
15. On April 13, 2001, DES personnel inspected the Property and observed the following:
 - a. The fill embankment, approximately 25-30 ft. high at its maximum section, was eroding in numerous places.
 - b. Uncontrolled sediment-laden runoff was flowing across the fill embankment and the unstabilized slope of the embankment.
 - c. Significant "blow outs" of the slope and deep rutting was occurring due to erosion of the embankment.

- d. Sediment was traveling 300-400+ ft. downslope of the embankment.
 - e. Material under the top 1-1.5 ft. of fill material was frozen.
 - f. There was significant turbidity in Beard's Brook caused by runoff coming from the Property. Water samples were taken and analyzed for turbidity. Turbidity results exceeded 700 NTUs for a sample collected at a point where runoff from the Property entered Beard's Brook. The background turbidity level in Beard's Brook was 4.27 NTUs.
16. On April 15, 2001, DES personnel noted turbidity in Beard's Brook caused by runoff coming from the Property. Water samples were taken and analyzed for turbidity. Turbidity results were 54 NTUs for a sample collected at a point where runoff from the Property entered Beard's Brook. The background turbidity level in Beard's Brook was 3.1 NTUs.
17. Surface water runoff from the Property flows into Beard's Brook, a surface water of the state.
18. Chapter 210:1, VI of the Laws of 1951 classified Beard's Brook as a Class B water.
19. NH Administrative Rules Env-Ws 1703.11(b) states that the turbidity in Class B waters shall not exceed naturally occurring conditions by more than 10 NTUs.
20. NH RSA 485-A:13 states that it shall be unlawful for any person or persons to discharge or dispose of any sewage or waste to the surface or groundwater of the state without first obtaining a permit from DES.
21. Sediment-laden water constitutes waste as defined under RSA 485-A.

D. DETERMINATION OF VIOLATIONS

- 1. Roads has violated NH RSA 485-A:17 by significantly altering terrain without the required permit from DES.
- 2. Roads has violated NH RSA 485-A:17 and Env Ws 415.09(i) by failing to install erosion control measures on the Property.
- 3. Roads has violated NH RSA 485-A:17 and Env Ws 415.09(j) by failing to stabilize areas within the site.
- 4. Roads has violated NH RSA 485-A:13 by discharging waste into the surface waters of the state without obtaining a permit from DES to do so.
- 5. Roads has violated Env-Wm 703 1(b) by causing turbidity in Beard's Brook of more than 10 NTUs over background.

E. ORDER

Based on the above findings, DES hereby orders Roads Construction, Inc. as follows:

- 1. Immediately stabilize the eroding embankment on the Property.
- 2. Within 5 days of this Order, prepare an erosion and sediment control plan ("Plan") for the Property, and submit said Plan to DES for review. The Plan shall include a schedule for implementing the measures described in the Plan.

3. Implement the Plan at the Property, as approved by DES, in accordance with the approved schedule.
4. Within 10 days of this Order, submit an application for a Site Specific Permit to DES. The application shall be prepared by an engineer licensed in the State of New Hampshire, and in accordance with Env-Ws 415.05.

Submit the completed Site Specific application and erosion and sediment control plans to:

Rene J. Pelletier, Manager
DES Water Division, Land Resources Management Program
6 Hazen Drive - P.O. Box 95
Concord, NH 03302-0095


F. APPEAL

Any person aggrieved by this Order may appeal the Order to the New Hampshire Water Council by filing an appeal that meets the requirements specified in Env-WC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>. Appealing the Order does not automatically relieve Roads Construction, Inc. of the obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 485-A:22 provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Roads Construction, Inc. remains obligated to comply with all applicable requirements, in particular installation of sufficient sediment and erosion controls to prohibit sediment from leaving the Property. DES will continue to monitor Roads' compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Hillsborough County Registry of Deeds so as to run with the land.


COPY
Harry E. Stewart, P.E., Director
Water Division


COPY
Robert W. Varney, Commissioner

Certified Mail # 7000 0600 0022 1248 7337
cc: ✓ Gretchen Rule, DES Enforcement Coordinator
Charles Knox, DES PIP Office
Hillsborough County Registry of Deeds
Steven E. Holdner & Julia M. Wayland
Ana Ford, WQE/WD/DES
Jeff Albright, NH DOT
Bill Ingham, NH Fish & Game
Hillsborough Planning Board
Hillsborough Conservation Commission